UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:16-CR-4-BO

UNITED STATES OF AMERICA	)	
	)	
v.	)	**OPPOSITION TO DEFENDANT'S RENEWED**
	)	**MOTION FOR JUDGMENT OF ACQUITTAL**
HEMZA MENADE LEFSIH	)	

"A defendant challenging the sufficiency of the evidence to support his conviction bears a heavy burden." *United States v. Beidler*, 110 F.3d 1064, 1067 (4th Cir. 1997). A jury's verdict "must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it." *Glasser v. United States*, 315 U.S. 60, 80 (1942). *See also United States v. Martin*, 523 F.3d 281, 284 (4th Cir. 2008). Substantial evidence is "evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *United States v. Alerre*, 430 F.3d 681, 693 (4th Cir. 2005). In conducting such a review, a court must "remain cognizant . . . that the jury, not the reviewing court, weighs the credibility of the evidence and resolves any conflicts in the evidence presented." *United States v. Burgos*, 94 F.3d 849, 862 (4th Cir.1996) (en banc).

Substantial evidence supported the guilty verdict in this case on all four counts of the Superseding Indictment. The elements as to Counts Two and Four (18 U.S.C. § 1546(a)), which encompass the elements of Counts One and Three (18 U.S.C. § 1015(a)), are as follows:

First: the Defendant made a false statement;

Second: the Defendant made the statement under oath or under penalty of perjury;

Third: the Defendant knew the statement was false at the time he made it;

Fourth: the statement was material to the activities or decision making of the agency to whom the statement was made; and

Fifth: the statement was made in an application required by the immigration laws or regulations prescribed thereunder of the United States.

Lefsih's Rule 29 argument focuses entirely on the third element -- whether he knew that his negative response to Question 23 on the N-400 naturalization application was false at the time he made it. The government's trial evidence on this issue included the following:

- Lefsih had received 11 citations on 8 different dates from 2011 to 2014, charging him with 15 different offenses, and he pled guilty to six of the offenses, resulting in his paying over $1000 in fines and court fees, in addition to attorney's fees;
- Lefsih received five notices from the North Carolina Department of Motor Vehicles that his driver's license was scheduled for suspension for failure to appear or to pay fines in connection with the citations, which would have impacted his ability to continue working as taxi cab driver;
- Lefsih was extremely eager to become a United States citizen, as evidenced by the fact that he sought to apply at the earliest opportunity (90 days prior to his five year anniversary as a permanent U.S. resident) by post-dating the application exactly three months prior to his five-year eligibility date and mailing it in too early;
- Lefsih is highly educated and intelligent, and has a very high proficiency in English, as evidenced by his enrollment in the chemical engineering program at N.C. State and his outstanding grades at Wake Tech Community College, where he received 16 A's and 4 B's in the 20 courses he took, including A's in

American Government, American History, and American Literature, and where he tested out of lower level reading and writing courses;

- Lefsih has a very high attention to detail, as reflected by his high grades, test scores, and chosen field of study (engineering), and he had strong reason to give the naturalization application his highest level of attention given his longstanding desire to become a United States citizen and the fact that his answers were given under penalty of perjury;

- The plain wording of the question at issue -- "Have you **ever** been arrested, cited, or detained by any law enforcement officer (*including any and all immigration officials or the U.S. Armed Forces*) for any reason?" – is extremely broad and contains no exceptions.

Lefsih argues that "not a single government witness offered evidence that Mr. Lefsih knowingly" failed to disclose his citations. D.E. 75 at 10. However, as the Supreme Court has observed, "knowledge must almost always be proved[] by circumstantial evidence." *United States v. Santos*, 553 U.S. 507, 521 (2008). Moreover, "circumstantial evidence is treated no differently than direct evidence, and may be sufficient to support a guilty verdict even though it does not exclude every reasonable hypothesis consistent with innocence." *United States v. Gray*, 137 F.3d 765, 772 (4th Cir. 1998).

In this case, substantial circumstantial evidence supports the jury's finding that Lefsih knowingly failed to disclose, in the naturalization application and interview, the eleven citations he had received in the past four years.

Accordingly, Lefish's motion should be denied.

Respectfully submitted this 24th day of May, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2016, I caused a copy of the foregoing to be served by electronic filing on Defendant's attorney of record, Jorgelina E. Araneda.

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